

**REMARKS BY CHIEF JUSTICE SHIRLEY S. ABRAHAMSON  
BEFORE THE JOINT COMMITTEE ON FINANCE**

**MARCH 29, 2005**

Good morning, Co-Chair Fitzgerald, Co-Chair Kaufert, and members of the Joint Committee on Finance. I appreciate the opportunity to appear before you this morning to speak about the Wisconsin Court System and how the recommendations in AB 100 may affect the operation of the courts.

I come before this committee today to request legislative support for the court funding contained in Assembly Bill 100. The bill includes reductions to our already tight budget. It recognizes the need for qualified court interpreters. It provides the flexibility we need to manage budget cuts during the 2005-2007 biennium. Under the bill, the Chief Justice as the administrative head of the justice system is given the authority to determine how these budget reductions will be met during the upcoming biennium. That flexibility in light of the reductions is crucial to our effort to meet our constitutional responsibilities to provide essential judicial services to the people of the state.

I urge you to support the judicial provisions in the bill. We, in turn, pledge to continue in the upcoming biennium to contain costs wherever and whenever possible and to meet the requirements set forth in AB 100.

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Next year, I shall celebrate my 10<sup>th</sup> anniversary as Chief Justice of the Wisconsin Supreme Court. The last decade has brought changes for the judicial branch and the way we conduct our business.

As I look back over these 10 years I am proud that the Wisconsin court system continues to meet the challenges it faces. The judicial branch has not met these

challenges alone. The support we have received from the legislative and executive branches of government have contributed to our success.

I anticipate that our discussions during this budget process will be similarly constructive. I hope to have the opportunity to meet with each of you to answer your questions, hear your ideas, and share my vision for a court system that is open, understandable, affordable, and fair for the people of our great state.

As I assess the court system today, I can tell you that the judicial system faces more challenges now than at any time during my tenure on the court. Meeting these challenges is critical because virtually all the people of this state, your constituents, will be affected by the work of the courts at some point in their lives.

I want to discuss the judicial branch's budget in A.B. 100 in terms of three pressing challenges that continue to affect the operation of the courts.

### **Challenge #1: The State's Fiscal Crisis**

The continuing fiscal crisis that state government has faced over the last four years has been unprecedented for most of us. We recognize that the judicial branch, along with the executive and legislative branches, must do its part in these difficult economic times.

To that end, I remind you that the judicial budget represents predominantly fixed, non-discretionary costs. The budget provides funding, most of it from general purpose revenues, for 264 elected officials -- 241 circuit court judges, 16 Court of Appeals judges and 7 Supreme Court justices.

The administrative structure of the Wisconsin court system is lean. We are able to operate efficiently and effectively by using a combination of central staff and chief judges and district court administrators in each of the 10 administrative districts. Although state statutes and Supreme Court rules assign more than 70 administrative responsibilities to chief judges, these judges continue to carry judicial workloads. The district court administrator serves as the administrative arm of the chief judge. As professional court managers, they are responsible for the day-to-day court operations and for long-term court improvement efforts such as increased services for self-represented litigants, courtroom and courthouse security (an ever increasing problem), technology, and innovative programs like restorative justice and drug treatment courts, just to name a few.

A strong volunteer committee network consisting of judges, clerks of courts, lawyers, court staff, and others supports this basic, frugal administrative structure. The judicial system simply could not function without the work of central staff, the chief judges, the district court administrators, and the committees.

Despite the court system's lean structure, we have absorbed significant budget reductions over the last two biennia, and the Supreme Court is committed to continue to identify savings wherever and whenever appropriate. We are continuing numerous cost containment measures that we adopted four years ago. I described some of these to you at our last budget meeting in March 2003. We have frozen certain positions, reduced expenditures for travel inside the state, eliminated state-funded out-of-state travel, significantly reduced the use of reserve judges and freelance court reporters, reduced the frequency and cost of committee meetings, shrunk office space, eliminated the purchase

of valuable legal resource materials, and reduced expenditures for equipment, supplies, and services. We are reducing our offerings in judicial education. Our Justice on Wheels program that brings the Supreme Court to cities throughout the state has been significantly limited. This nationally recognized program is an invaluable educational tool that allows the public, especially students, to gain a better understanding of how the Court functions and how state government in Madison is serving its citizens. To save money, we now go to one city a year, instead of two or three.

The combination of rising caseloads and four years of cost containing measures have put significant stresses and strains on the judicial system and they continue to intensify. To put these stresses and strains in perspective, our current workload methodology indicates a need for more circuit court judges to keep up with the work. As a result, the decreased use of reserve judges puts a strain on already busy judges who are trying to avoid delays in handling cases. Reserve judges who are not used frequently have more difficulty keeping pace with changes in the law and in the processing of cases. In the end, we have crowded dockets and fewer proficient reserve judges to serve when needed.

In good economic times and in bad, the Supreme Court remains committed to carrying out its constitutional duty to provide essential judicial services to the people of the state. We are concerned, as you all are, about the judiciary's ability in years of fiscal pressure and continuing budget reductions to perform its constitutional obligations. At some point neglecting the needs of the judicial branch may endanger judicial independence and our ability to provide a fair, effective, efficient judicial system for the people we all serve. We cannot, and will not, compromise the delivery of justice in this

state or the judicial system's integrity or independence. We believe AB 100 provides the resources and flexibility needed to meet our obligations, and we urge your approval of these provisions.

### **Challenge #2: Growth of the Immigrant Community**

Ten years ago, many residents of the city of Barron, Wisconsin, might have had trouble pinpointing the nation of Somalia on a map. Today, 12 percent of that city's residents are natives of Somalia. Ten years ago, you did not hear much Spanish spoken in Green Bay. Today, the St. Norbert Abbey in De Pere reports that Hispanic families comprise nearly half of the parishioners in some local parishes; churches offer multiple weekly masses in Spanish.

According to the 2000 census, the Hispanic and Asian populations in Wisconsin have doubled since 1990 and many other immigrant populations grew, and continue to grow, at a rapid rate. A 2004 U.S. Census Bureau estimate<sup>1</sup> reveals that 60,000 foreign-born immigrants have moved to our state just since 2000, and during fiscal year 2005 alone, Wisconsin expects to resettle more than 3,000 Hmong and 300 other refugees, more than ten times the normal arrival rate.<sup>2</sup> These immigrants have come for the same reasons the Norwegians came in the 1840s, the Germans came in the 1850s, and the Italians came at the turn of the 20<sup>th</sup> century: opportunities for education and for work and for a better life.

In the course of building those better lives, our newest residents, like the rest of us, turn to the courts to resolve disputes. In court, language is the basic tool ensuring that justice is provided fairly and impartially. The number of people appearing in our courts

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<sup>1</sup> Current Population Survey, U.S. Census Bureau, March 2004

<sup>2</sup> Hmong Resettlement Task Force Report to the Governor, February 2005

with language barriers — litigants, victims, and witnesses — continues to increase dramatically. One Milwaukee judge said that she has had to find interpreters, in her courtroom alone, for Spanish, Hmong, Russian, Laotian, Vietnamese, Cantonese, Punjabi, Hindi, Arabic, Somali, and Polish. While these demographic changes affect some communities more acutely than others, all Wisconsin communities are affected.

In the 2001-2003 biennial budget act (Act 16), the Legislature took important steps to improve access to qualified court interpreters by creating a court interpreter training and certification program and increasing reimbursement rates to counties for interpreter services. However, the governor vetoed an interpreter manager position and funding for the certification program. When I appeared before you two years ago, I said we would be receiving a one-time federal grant to allow us to create, with federal dollars, the vetoed interpreter manager position and to begin the testing and certification program that the Legislature had provided in Act 16.

I am pleased to report that the legislative steps combined with the one-time federal grant, have allowed us to use federal dollars for a position to oversee the interpreter program and to begin the testing and certification process that the Legislature required in Act 16. Over 500 people have attended interpreter training on such topics as court terminology and procedure, ethics, and interpreting skills. One-hundred-ten interpreters have passed the written portion of the certification test and are eligible to take the oral test. Forty-seven interpreters have taken the oral test for certification, and 29 interpreters (22 Spanish, 6 American Sign Language, 1 Russian) are now fully certified. Just this month, two Hmong interpreters are taking the oral certification test for the first time in Wisconsin.

We are educating judges, court staff and attorneys on best practices for appointing and using interpreters, translating vital court documents into Spanish, and developing a comprehensive glossary of over 600 legal terms in Hmong.

We have accomplished much, but there is still much to do, and our one-time federal grant will end December 31, 2005. Assembly Bill 100 converts the federally funded interpreter manager position to GPR funding, and provides funds to continue training, testing and certifying interpreters, and translating court documents.

While we have made progress increasing the pool of qualified interpreters for Spanish-speaking court users, and are taking steps towards certifying Hmong interpreters, the requests we receive from courts reflect the need to increase the interpreter pool in other languages throughout the state. Oconto County used the services of a Slovak translator; Marathon County is looking for qualified court interpreters for Mandarin and Vietnamese; Dane County has a pressing need for Cambodian interpreters, while Sauk County uses Russian interpreters. Recruitment of new interpreters and on-going training for existing interpreters is a priority. Our experience tells us all interpreters, but especially those who speak languages other than Spanish, need additional training and continuing education to ensure they fully understand the language of the courts.

This year, training on the proper use of interpreters and sensitivity training has been conducted for the prisons and is planned for the annual judicial conference and judicial education, as well as for court-related offices such as Office of Lawyer Regulation and the State Law Library.

Assembly Bill 100 also includes our request to make interpreters available at public expense to all litigants who require them in all types of cases regardless of

indigency. This proposal will bring Wisconsin courts into compliance with a federal executive order, issued by President Clinton and reaffirmed under President Bush, that requires recipients of federal funds to provide competent interpreters at no cost to persons of limited English proficiency.

The bill provides additional funding to reimburse counties for cost increases associated with higher reimbursement rates for certified interpreters and increased demand for court interpreter services under current law and under the proposed statutory changes. These measures will ensure that our courtrooms are accessible so that no Wisconsin resident faces losing custody of his or her child, or losing his or her home, or is unable to get a restraining order because he or she cannot understand English.

I appear before you today to strongly urge you to maintain the court interpreter provisions of Assembly Bill 100. We simply cannot dismantle this vital program when the need for qualified court interpreter services continues to rise dramatically.

### **Challenge #3: Safeguarding Access to Justice**

Access to justice is a key objective of state government. With regard to the criminal justice system, Representative Mark Gundrum said it best at an inter-branch conference last fall that focused on the Avery Task Force established to safeguard against wrongful convictions. He said: "If the criminal justice system is not a legitimate place to spend public money, there is no legitimate place to spend money."

Steven Avery's conviction was overturned as a result of DNA evidence after he served 17 years in prison. DNA evidence, the human bar code, is in many ways a dream come true for the universal notion of justice. It is a tool that can either place or remove a suspect from a crime scene. The ultimate safeguard against injustice is, however,

effective prosecutors and defense counsel. Both the federal and Wisconsin constitutions require that the state provide competent, fairly paid lawyers to indigent persons facing criminal charges.

The needs in the criminal justice system are great. Federal funding cuts are eliminating state prosecutor positions that will slow case processing. The 17-year old indigency standards for the Office of State Public Defender do not allow the Office to provide legal representation to all indigent defendants and therefore court-appointed counsel are necessary, recreating a dual system of indigent defense representation, which the State Public Defender was originally intended to eliminate. The indigency standards need to be updated. The rates paid to private bar attorneys appointed by the Office are lower now than they were 10 years ago, making it more difficult to find qualified attorneys willing to accept appointments.

Achieving real justice for the people of the state of Wisconsin means guarding against wrongful criminal convictions and also assisting indigent persons in civil matters. Assembly Bill 100 provides funding for civil legal services to indigent persons to help in targeted areas including guardians ad litem and child support. These funds would be allocated to the Wisconsin Trust Account Foundation (WisTAF), which was created by the Supreme Court to provide vital legal services using interest on lawyer trust accounts. With declining interest rates, WisTAF faces a funding crisis. In response, the Supreme Court in January granted a WisTAF petition to assess Wisconsin lawyers \$50 a year to help pay for legal services for the poor. Providing legal services to the indigent is not, however, solely a lawyers' issue -- all the people of Wisconsin have an interest in and responsibility for finding a long-term solution to providing needed civil legal services to

the poor, just as all citizens have an interest in seeing that no person is sent to prison for a crime that he or she did not commit. We believe the proposal in A.B. 100 is a small step in the direction of justice for all. I urge you to retain this provision.

Any discussion of access to the courts and of barriers to access – and in particular financial barriers to such access – must include a mention of surcharges. I do not come with a recommendation concerning A.B. 100's proposed increases to certain surcharges assessed on fines and forfeitures, but I do want to point out potential problems with their continuing escalation. Assembly Bill 100 increases the following surcharges: the penalty surcharge, the justice information surcharge, the crime laboratories and drug law enforcement surcharge, and the victim-witness surcharge. In addition, a new child abuse prevention and child mental health surcharge would be created. These surcharges all fund worthwhile programs, but we remain concerned about the rapid growth in surcharges, the time and effort required to collect them, and their potential impact on the justice system.

Since 1987, the number of surcharges in Wisconsin has nearly tripled, and the surcharge revenue has increased by more than 500%. County clerks of court bear the responsibility for collecting surcharges, despite the fact that many offenders simply cannot afford to pay. These non-paying offenders may end up in already overcrowded jails, or they may have their driver's licenses suspended or revoked but continue to drive and risk yet another citation. This inability to pay, and the sanctions that result, could be a contributing factor in the increased number of convictions statewide for driving with a suspended or revoked driver's license. Continuing to look to surcharges for new program funding may have a negative ripple effect and unintended consequences.

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Again, thank you for the opportunity to address you today. We in the judicial branch recognize that we are only one part of a justice system that includes thousands of men and women who work in law enforcement and corrections, in social services, and as attorneys. We shall continue to seek the support and help of the public and our partners in government in assuring justice and fair and equal treatment for our mutual constituents, the people of this great state.

Our institutional principles remain constant as ever-changing developments will continue to test the judiciary and the administration of the courts. Our challenges are many. We have met challenges in the past, and I look forward to working with all of you in the months and years ahead to address the pressing challenges we face today.